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Federal Communications Commission  
Office of Secretary

July 10, 1996

**BY HAND**

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

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NEW YORK, NY 10022-2585

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SPECIAL COUNSEL  
JEROLD L. JACOBS

Re: MM Docket No. 96-43  
FM Table of Allotments  
Frederiksted, Virgin Islands

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, D/B/A Calypso Communications, are an original and four (4) copies of its "COUNTERPROPOSAL REPLY COMMENTS OF CALYPSO COMMUNICATIONS" in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**  
JUL 10 1996  
Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 96-43  
Table of Allotments, ) RM-8754  
FM Broadcast Stations )  
(Frederiksted and Charlotte Amalie,<sup>1</sup>) RM-  
Virgin Islands) )

TO: Chief, Allocations Branch  
Mass Media Bureau

**COUNTERPROPOSAL REPLY COMMENTS OF**  
**CALYPSO COMMUNICATIONS**

**D/B/A CALYPSO COMMUNICATIONS** ("Calypso"), permittee of Station WVN(FM), Charlotte Amalie, Virgin Islands, by its attorneys, pursuant to §1.415(d) of the Commission's Rules, hereby submits its Counterproposal Reply Comments in support of its May 3, 1996 "Counterproposal and Comments" and in opposition to the Notice of Proposed Rule Making ("NPRM"), 11 FCC Rcd 3010 (Mass Media Bur. 1996), in this proceeding. In support whereof, the following is shown:

1. At the request of José J. Arzuaga ("Arzuaga"), the NPRM proposed to allot Channel 297B1 to Frederiksted, Virgin Islands as that community's third local FM transmission service. By Public Notice (Report No. 2138, "Petition for Rulemaking Filed"), released June 25, 1996, the Commission requested comment on Calypso's Counterproposal, which has three objectives: (a) allot Channel 297B1 to Charlotte Amalie, instead of to Frederiksted; (b) modify Calypso's construction permit to specify operations on Channel 297B1, instead of Channel 246B, pursuant to §1.420(g) of the Rules, without allowing other expressions of interest; and (c) delete Channel 246B from the FM Table of Allotments as unusable.

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<sup>1</sup> The community of Charlotte Amalie, Virgin Islands has been added to the caption.

2. As fully demonstrated in Calypso's "Counterproposal and Comments," Calypso's proposed Charlotte Amalie allotment enjoys a decisive preference over Arzuaga's proposed Frederiksted allotment. This is especially so because grant of Calypso's channel substitution proposal is necessary to allow Calypso to activate its already-granted construction permit for Station WVNK. The Commission originally allotted Channel 246B to Charlotte Amalie in 1987, and Calypso's Counterproposal seeks to implement that nine-year-old allotment judgment at the present time with a viable frequency. Arzuaga's proposal does not have any such equity and deserves no allotment preference. Calypso will now rebut Arzuaga's May 20, 1996 Reply Comments and will further show how and why its Counterproposal deserves a dispositive preference over Arzuaga's proposal under the "other public interest matters" fourth priority of FM Channel Policies/Procedures, 90 FCC 2d 88 (1982).<sup>2</sup>

3. The Engineering Statement ("Engineering Statement") in Calypso's "Counterproposal and Comments" fully supports allotting Channel 297B1 to Charlotte Amalie. The Counterproposal is summarized as follows:

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<sup>2</sup> Calypso's May 20, 1996 Reply Comments also addressed a counterproposal filed by Rafael Serra ("Serra"), which proposes to allot Channel 296B1 to Frederiksted to satisfy Arzuaga's allotment request and then to allot Channel 298A to the allegedly licensable community of "Saint John, V.I." as a first local transmission service. Calypso showed that there were fatal legal and technical defects with Serra's plan, which warranted its dismissal without consideration. Since the Commission has not placed Serra's counterproposal on Public Notice, Calypso assumes that it will not be considered in this proceeding. If it is considered, Calypso hereby incorporates by reference the objections that it stated in its Reply Comments and in its June 13, 1996 Reply to Joint Opposition to Motion to Dismiss. Likewise, Calypso reiterates its objection to Serra's "expression of interest" in applying for Charlotte Amalie, contained in Paragraph 16 of Serra's "Joint Opposition to Motion to Dismiss". As explained in Paragraph 8 and footnote 4 of Calypso's "Counterproposal and Comments," Calypso's proposal to downgrade Station WVNK from Channel 246B to Channel 297B1 does not require entertaining other expressions of interest in the frequency under §1.420(g), because no upgrade is involved, and therefore Serra's purported "expression of interest" should be rejected.

**Channel Number**

<b><u>City</u></b>	<b><u>Present</u></b>	<b><u>Proposed</u></b>
Charlotte Amalie, Virgin Islands	*226A, 241B1, 246B, 250B, 271B, *275A, 282B, 287B	*226A, 241B1, 250B, 271B, *275A, 282B, 287B, 297B1

**Note: No change in present allotments for Frederiksted, Virgin Islands.**

4. It is well established that where, as here, a choice must be made between two proposed channel allotments and no first or second aural reception service or first local transmission service is involved, the Commission reaches its public interest determination by comparing and weighing all relevant engineering and socio-economic factors, including number of local services, relative size of communities, and relative overall service areas. See FM Channel Policies/Procedures, supra at 92 n.8; FM Table of Allotments (Greenup KY and Athens OH), 2 FCC Rcd 4319, 4321 (Mass Media Bur. 1987). Applying these criteria, it is clear that Calypso's proposed Charlotte Amalie allotment enjoys a decisive preference over Arzuaga's proposed Frederiksted allotment.

5. Commission allotment policy favors a general proportionality between communities' populations and the number of radio services. See Baker v. FCC, 834 F.2d 181, 183 n.4 (D.C. Cir. 1987) ("the need for radio service is assessed primarily in light of the facilities presently available in the proposed communities and their relative population"). Under that standard, the 11 to 3 ratio in aural services between Charlotte Amalie and Frederiksted, which Calypso proposes to perpetuate, compares very favorably with the 11 to 1 ratio in populations between the two cities. Therefore, Calypso urges that Frederiksted is amply served by the availability of three radio frequencies, and Arzuaga has shown absolutely no need for the

allotment of a third local FM transmission service when proportionality and common experience suggest that even a single local transmission service -- let alone three -- suffices for Frederiksted's minuscule population of 1,064. Simply stated, under the Commission's obligation in §307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b), to "provide a fair, efficient, and equitable distribution of radio service" throughout the United States, Charlotte Amalie has a much greater public interest need for a technically viable eleventh aural service than Frederiksted has for a fourth service.

6. Most importantly, as explained in the Engineering Statement, grant of Calypso's channel substitution proposal is necessary to allow Calypso to implement its already-granted construction permit for Station WVNK. Thus, Calypso is not asking for an additional allotment to be made to Charlotte Amalie -- only that a previously-authorized allotment be made usable.

7. Calypso's construction permit for Station WVNK was initially issued on June 25, 1991 (Permit File No. BPH-870707MI), but it is not usable because operation on Channel 246B would result in mutually destructive interference with respect to Channel 247C, which is authorized in Tortola, British Virgin Islands. In its May 20, 1996 Reply Comments (at ¶¶ 4-5), Arzuaga challenges this claim because the Tortola station is currently silent. However, Calypso has previously attempted to obtain a different channel substitution for the same reason, and, in Report and Order in MM Docket No. 92-244 ("R&O"), 10 FCC Rcd 8111, 8113 ¶10 (Mass Media Bur. 1995), the Commission confirmed Calypso's technical assessment of its inability to construct a station on Channel 246B, and held that allowing a channel substitution for Station WVNK was "warranted". Nevertheless, the Commission concluded that it could not find an allotment solution for Station WVNK in that proceeding. See R&O, supra, 10 FCC Rcd at 8114 ¶10. Thus, Arzuaga's challenge to Calypso's basic public interest justification for a new

allotment has already been decided in Calypso's favor, and the Commission should affirm that decision herein. Moreover, as the Engineering Statement demonstrates, only Channel 297 is available to cure Calypso's interference problem.

8. Finally, Arzuaga's Reply Comments (at ¶6) assert that it is more important to increase the number of FM stations in Frederiksted from two to three -- in terms of the "diversity of voices in the market" -- than it is to provide an eighth viable FM service to the much larger community of Charlotte Amalie. Arzuaga is mistaken in two respects. First, there is no Commission allotment case precedent supporting Arzuaga's "voices" notion, and none is cited by Arzuaga. Rather, what counts in allotment proceedings is establishing or maintaining a general proportionality between communities' populations and the number of local radio transmission services. See Baker v. FCC, supra. Calypso's Counterproposal clearly wins in that comparison, since its 11 to 1 edge in population is commensurate with the proposed 11 to 3 advantage in radio stations. Second, a proper "diversity of voices" argument (in Commission multiple ownership waiver cases) encompasses all radio and television transmission and reception services in a market -- not just FM transmission services in one city of that market. See Second Report and Order in MM Docket No. 87-7 (Broadcast Multiple Ownership Rules), 4 FCC Rcd 1741, 1751 ¶76, recon. granted in part, 4 FCC Rcd 6489 (1989). Thus, the Frederiksted "market" includes Frederiksted's three AM and FM authorizations, as well as Christiansted's one AM, five FM, and one TV authorization. This total of 10 Frederiksted market "voices" is essentially the same as the 13 Charlotte Amalie market "voices" (11 AM and FM authorizations and two TV authorizations). Hence, even if Arzuaga's "voices" argument were relevant in allotment cases -- which it is not -- the facts do not show that the Frederiksted "market" is


appreciably different from the Charlotte Amalie "market" in terms of "diversity of voices" and do not provide any basis for preferring Arzuaga's proposal over Calypso's.

9. In sum, Calypso's Counterproposal should prevail over Arzuaga's proposal because: (a) it permits the Commission to resolve a technical interference impasse whereby Calypso is currently required to construct Station WVN~~X~~ on an unusable frequency at Charlotte Amalie; and (b) it allows Charlotte Amalie to obtain a usable eighth FM transmission service, which was originally allotted in 1987 and for which it has a greater need than Frederiksted under established allotment criteria. Calypso reiterates its intention to promptly file an application to implement operation on Channel 297B1 at Charlotte Amalie, if that allotment is adopted by the Commission.

WHEREFORE, in light of the foregoing, D/B/A Calypso Communications respectfully requests that the Commission should grant its Counterproposal, deny Arzuaga's Frederiksted proposal, and amend the FM Table of Allotments as set forth in Paragraph 3, supra.

Respectfully submitted,

**D/B/A CALYPSO COMMUNICATIONS**

By   
Howard J. Braun  
Jerrold L. Jacobs

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Its Attorneys

Dated: July 10, 1996


**CERTIFICATE OF SERVICE**

I, Debra A. Williams, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 10th day of July, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**COUNTERPROPOSAL REPLY COMMENTS OF CALYPSO COMMUNICATIONS**" to the following:

John A. Karousos, Chief\*  
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Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
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**\*BY HAND**